

Complaint of Fiber Technologies Networks, L.L.C., pursuant to G.L. c. 166, § 25A and 220 C.M.R. § 45.00 et seq. against Verizon New England, Inc. d/b/a Verizon Massachusetts, Western Massachusetts Electric Company, and Massachusetts Electric Company.

HEARING OFFICER RULING ON FIBERTECH MOTION FOR EXTENSION

I. POSITIONS OF THE PARTIES

By letter filed on June 2, 2003, Fiber Technologies Networks, L.L.C. (“Fibertech”) moved for an extension of time to file its opposition to motions by Verizon New England, Inc. (“Verizon”) and by Western Massachusetts Electric Company (“WMECo”) to dismiss Fibertech’s Complaint, filed separately on May 28, 2003. Fibertech states that its opposition to their motions would have been due on June 4, 2003. Fibertech further states that one of the respondents in this proceeding, Massachusetts Electric Company (“MECo”) was not served until May 27, 2003, and argues that “[a] responsive pleading therefore is not due pursuant to 220 C.M.R. § 45.06(4) until June 16, 2003.” Fibertech asserts that it is likely that MECo will also file a motion to dismiss at the same time that it files its responsive pleadings. Fibertech argues that it would be “more expeditious” for the Department to receive Fibertech’s opposition to all three motions in a single filing rather than receive an opposition to MECo’s anticipated motion separately. Finally, Fibertech states that, on June 3 through June 5, 2003, its counsel had meetings scheduled in the generic pole attachment proceedings before the New York Public Service Commission, docket 03-M-0432. Therefore, Fibertech requested an extension until the date that its response to MECo’s motion would be due.

By letter filed on June 3, 2003, Verizon objected to the length of time of Fibertech’s request and suggested that Fibertech’s opposition should be due on June 11, 2003. As grounds for its opposition, Verizon states that MECo has additional time in which to file a motion to dismiss only because Fibertech failed to serve MECo at the same time as the other parties. Verizon argues that Fibertech “should not be allowed to capitalize on its own error,” and that it has made no showing of how or why a separate response to MECo’s anticipated motion to dismiss would be “prejudicial or cost-prohibitive.” WMECo filed no opposition.

II. RULING

As an initial matter, I note that Fibertech has misstated MECo's deadline for filing an answer to Fibertech's Complaint. Section 45.06 applies only when formal hearing has been waived. Fibertech has requested an evidentiary hearing. If MECo was served on May 27, 2003, then MECo's answer would be due on June 10, 2003, not June 16, 2003. 220 C.M.R. § 45.05(1). Assuming that MECo files a motion to dismiss along with its answer, Fibertech's opposition to MECo's motion to dismiss would be due on June 18, 2003.¹ 220 C.M.R. §§ 1.02(4), 1.04(5). I also caution the parties that although the Department will attempt to accommodate the parties in scheduling hearings and other procedural deadlines where possible, the fact that several pole attachment proceedings involving the parties are being conducted simultaneously before various state commissions and other legal forums will not be good cause by itself for delay of any procedural deadline in these proceedings.

Nevertheless, any time limit prescribed by the Department's regulations may be extended "for good cause shown." 220 C.M.R. § 1.02(5). Given the common issues raised in the separate motions to dismiss by Verizon and WMECo, and given the likelihood that MECo will file a similar motion, I find that it would be administratively efficient to permit Fibertech to respond to the motions in a single filing. Further, because Fibertech's opposition would be due well in advance of the procedural conference to be held on June 24, 2003, no party will be prejudiced by Fibertech's request. Fibertech's request for an extension is GRANTED.

Under the provisions of 220 C.M.R. § 1.06(6)(d)(3), any party may appeal this Ruling to the Commission by filing a written appeal with supporting documentation within five (5) days of this Ruling. Any appeal must include a copy of this Ruling.

/s
Jesse S. Reyes, Hearing Officer

Date: June 10, 2003

¹ The additional day is as a result of an intervening Suffolk County legal holiday.